

**STATEMENT OF EMERGENCY**  
**907 KAR 3:300E**

This emergency administrative regulation is being promulgated to establish actions that the Department for Medicaid Services may take in response to a declared national or state emergency. These actions include expanding or enhancing certain services and benefits, including telehealth services, expanding eligibility, and allowing for simplified application processes, provider enrollment, and rate enhancements. This emergency administrative regulation also allows for the expansion of telehealth or telecommunications services within the Women, Infants, and Children program. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. to prevent a loss of federal and state funds, and pursuant to KRS 13A.190(1)(a)4. to protect human health. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
ERIC FRIEDLANDER, Acting Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Policy and Operations**  
**(New Emergency Administrative Regulation)**

**907 KAR 3:300E. Enhanced and suspended Medicaid services and requirements if there is a declared national or state emergency.**

RELATES TO: KRS 194A.060, 205.510(15), 205.559, 205.560, KRS Chapter 39A

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.559(2), (7), 205.560

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 194A.030(2), the Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the requirements for enhancing or suspending certain Medicaid services and requirements if there is a declared national or state emergency.

Section 1. General Provisions Relating to a Declared Emergency. (1) In accordance with all applicable federal law, the department shall respond to a declared national or state emergency that is related to or rationally related to healthcare or public health by temporarily enhancing, expanding, or suspending Medicaid services and requirements as necessary to respond to the declared emergency.

(2) The department shall provide information about specific expanded services via the use of the department's Web site, electronic provider letters, or other reliable methods of communication with members, providers, and stakeholders.

(3) The department may target any activity undertaken pursuant to this administrative regulation to a subpopulation based on criteria that include:

- (a) Geography;
- (b) Age;

- (c) Condition; or
- (d) Disease.

Section 2. Enhanced or Expanded Medicaid Benefits. Medicaid services and requirements that may be enhanced or expanded include:

- (1) Any appropriate health service related to or rationally related to the declared emergency;
- (2) Telehealth services, which may include:
  - (a) Those services that are otherwise designated as face-to-face only throughout Title 907 KAR;
  - (b) The use of equipment, such as a telephone, that would not customarily be allowable for a telehealth service pursuant to Title 907 KAR; or
  - (c) Expanded use of asynchronous telehealth or store-and-forward telehealth, including:
    - 1. Remote patient monitoring, as appropriate; or
    - 2. Any other telehealth service for which an evidence base exists to justify the safety and efficacy of the service when provided as asynchronous telehealth;
  - (3) The introduction or expansion of any appropriate telecommunication or electronically mediated health service as allowable pursuant to federal law; or
  - (4) "Telehealth" or "telehealth service" or "telehealth consultation" as it is defined throughout 907 Title KAR, which shall be equivalent to an in-person service or a service requiring physical presence.

Section 3. Eligibility. Pursuant to Section 1 of this administrative regulation, the department may:

- (1) Temporarily expand eligibility to include individuals with higher income than currently allowed pursuant to 907 KAR 20:100;
- (2) Temporarily suspend the requirement that a beneficiary eligible pursuant to 42 U.S.C. 1396a(a)(10)(A)(ii)(V) be institutionalized for at least thirty (30) days;
- (3) Implement a simplified electronic or paper application for use by designated providers; or
- (4) Extend the availability of presumptive eligibility to additional groups than allowed pursuant to 907 KAR 20:050.

Section 4. Temporary Enhancement of Rate or Rate Methodology. The department may temporarily enhance rates or rate methodology relating to a declared national or state emergency.

Section 5. Provider Enrollment. (1) In response to a declared national or state emergency, the department may:

- (a) Simplify any existing provider enrollment process to meet an existing or anticipated demand for health services; or
  - (b) Reenroll retired or previously enrolled providers.
- (2) Any enrollment or reenrollment process utilized pursuant to subsection (1) of this section shall exercise discretion when enrolling or not enrolling providers with a history of disenrollment for good cause or other negative criminal or registry record.

Section 6. Women, Infants, and Children (WIC) Program Services. (1) The department or any other agency of the Cabinet for Health and Family Services shall facilitate the provision of all appropriate WIC services via telehealth or as a telecommunications or other electronically mediated health service to the full extent allowable by federal or state law.

(2) For the purposes of all WIC services administered by the Cabinet for Health and Family Services, any requirement that a service be "face-to-face", "in-person", or "physically present"

shall include a synchronous telehealth or telecommunication or other electronically mediated health service.

Section 7. Federal Financial Participation. A policy established in this administrative regulation may be null and void if the Centers for Medicare and Medicaid Services:

- (1) Denies federal financial participation for the policy; or
- (2) Disapproves the policy.

Section 8. If any policy stated in another administrative regulation within Title 907 of the Kentucky Administrative Regulations contradicts a policy stated in this administrative regulation, the policy stated in this administrative regulation shall supersede the policy stated elsewhere within Title 907.

LISA D. LEE, Commissioner

ERIC FRIEDLANDER, Acting Secretary

APPROVED BY AGENCY: March 19, 2020

FILED WITH LRC: March 19, 2020

CONTACT PERSON: Donna Little, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Department for Medicaid Services (DMS) policies relating to additional Medicaid services, benefits, enrollment, and eligibility that may be available during a declared emergency. This administrative regulation also allows for the expansion of telehealth or telecommunications services within the Women, Infants, and Children program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and enhance DMS policies relating to activities that may be undertaken in response to a declared emergency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by implementing and clarifying policies that may be undertaken in response to a declared emergency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: In response to a declared emergency, DMS may need to undertake various actions. This administrative regulation will establish a process and clarifications relating to activities that DMS may immediately undertake to address a declared emergency.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, managed care organizations (MCOs), any enrolled and credentialed provider, and Medicaid members who may be impacted by a declared emergency. Similarly, the WIC program administered by the Department for Public Health is included to allow for telepresence applications.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers and recipients and potential recipients will need to comply with departmental directions relating to any declared emergency.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). DMS does not anticipate initial costs as this administration authorizes future actions. However, depending on the department's response to a declared emergency, providers, MCOs, or DMS could experience some costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Entities will be able to access or provide additional services and benefits in response to a declared emergency.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The department anticipates that it will incur no additional expenses in the implementation of this administrative regulation initially, as this administrative regulation simply authorizes future actions necessary if there is a declared emergency. If there is a declared emergency, there could be costs associated with the Department's response to the declared emergency.

(b) On a continuing basis: The department anticipates that it will incur no additional expenses in implementing this administrative regulation on a continuing basis, as this administrative regulation simply authorizes future actions necessary if there is a declared emergency. If there is a declared emergency, there could be costs associated with the Department's response to the declared emergency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in the context that enhanced or expanded eligibility or services may be located within a specific area or limited to a specific disease or population.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The De-

partment for Medicaid Services (DMS) and the Department for Public Health will be impacted by the administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 194A.010, 194A.030(2), and 205.520(3)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The department anticipates that it will incur no additional expenses in the implementation of this administrative regulation initially, as this administrative regulation simply authorizes future actions necessary if there is a declared emergency. If there is a declared emergency, there could be costs associated with the Department's response to the declared emergency.

(d) How much will it cost to administer this program for subsequent years? The department anticipates that it will incur no additional expenses in implementing this administrative regulation on a continuing basis, as this administrative regulation simply authorizes future actions necessary if there is a declared emergency. If there is a declared emergency, there could be costs associated with the Department's response to the declared emergency.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: